

Case 2:07-cv-01899-GEB-EFB Document 6 Filed 09/21/2007 Page 1 of 1

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814

FILED
SEP 26 AM 10:01
RICHARD W. WIERING
CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SBA

United States District Court
Northern District of California
450 Golden Gate Ave. 16th Floor
San Francisco, CA 94102

(PR)

RE: LILIAN GUTERRES vs. SUPERIOR COURT OF CALIFORNIA
USDC No.: 2:07-CV-01899-GEB-EFB

Dear Clerk,

Pursuant to the order transferring the above captioned case to your court, dated September 21, 2007, transmitted herewith are the following documents.

Electronic Documents: 1 to 5.

Documents maintained electronically by the district court are accessible through PACER for the Eastern District of California at <https://ecf.caed.uscourts.gov>.

Please acknowledge receipt on the extra copy of this letter and return to the Clerk's Office.

Very truly yours,

September 21, 2007

/s/ J. Donati

Deputy Clerk

RECEIVED BY:

Please Print Name

DATE RECEIVED:

SEP 26 2007


NEW CASE
NUMBER:

C-07-04966-SBA

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST: **VICTORIA C. MINOR**

Clerk, U.S. District Court
Eastern District of California

By  Deputy Clerk

Dated 9/21/07

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LILIAN GUTERRES,

Petitioner,

No. CIV S-07-1899 GEB EFB P

vs.

SUPERIOR COURT OF
CALIFORNIA, et al.,

Respondents.

ORDER

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. See 28 U.S.C. § 2254. However, petitioner has commenced this action in the wrong district.

Petitioner was convicted in San Mateo County, but is confined in Madera County. Although this court and the United States District Court in the district where petitioner was convicted both have jurisdiction, see *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 499-500 (1973), witnesses and evidence necessary for the resolution of petitioner's application are more readily available in the county of conviction. *Id.* at 499 n. 15; 28 U.S.C. § 2241(d).

Therefore, the court transfers this action to the United States District Court for the Northern District of California. 28 U.S.C. §§ 84; 1404(a).

////

1 Accordingly, it is ORDERED that this action is transferred to the United States District
2 Court for the Northern District of California.

3 DATED: September 20, 2007.

4 

5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MIME-Version:1.0
From:caed_cmcdf_helpdesk@caed.uscourts.gov
To:caed_cmcdf_nef@localhost.localdomain
Bcc:caed_cmcdf_efb@caed.uscourts.gov, caed_cmcdf_geb@caed.uscourts.gov
Message-Id:<1863102@caed.uscourts.gov>
Subject:Activity in Case 2:07-cv-01899-GEB-EFB (HC) Guterres v. Superior Court of California et al Order
Content-Type: text/html

NOTE TO PUBLIC ACCESS USERS There is no charge for viewing opinions.

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 9/21/2007 at 11:16 AM PDT and filed on 9/21/2007

Case Name: (HC) Guterres v. Superior Court of California et al

Case Number: 2:07-cv-1899

Filer:

WARNING: CASE CLOSED on 09/21/2007

Document Number: 5

Docket Text:

ORDER signed by Judge Edmund F. Brennan on 9/20/07 ORDERING the CASE TRANSFERRED to the Northern District of California. Original file, certified copy of transfer order, and docket sheet sent. CASE CLOSED.(Donati, J)

2:07-cv-1899 Electronically filed documents will be served electronically to:

2:07-cv-1899 Electronically filed documents must be served conventionally by the filer to:

Lilian Guterres
X-06750
VALLEY STATE PRISON FOR WOMEN (92)
P.O. BOX 92
CHOWCHILLA, CA 93610-0099

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=9/21/2007] [FileNumber=1863100-0]
][744b7e14af3c032474340ab732463b29a52e6bf03481773788ae2de3708f22cbcd
57528865e4a11d90e3aa1ffeb7eba0f36d261ed30e62345117fc5e0ccc995]]

U.S. District Court
 Eastern District of California - Live System (Sacramento)
 CIVIL DOCKET FOR CASE #: 2:07-cv-01899-GEB-EFB
 Internal Use Only

(HC) Guterres v. Superior Court of California et al
 Assigned to: Judge Garland E. Burrell, Jr
 Referred to: Magistrate Judge Edmund F. Brennan
 Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 09/13/2007
 Date Terminated: 09/21/2007
 Jury Demand: None
 Nature of Suit: 530 Habeas Corpus (General)
 Jurisdiction: Federal Question

Petitioner

Lilian Guterres

represented by **Lilian Guterres**
 X-06750
 VALLEY STATE PRISON FOR WOMEN (92)
 P.O. BOX 92
 CHOWCHILLA, CA 93610-0099
 PRO SE

V.

Respondent

Superior Court of California

Respondent

District Attorney
 County of San Mateo

Respondent

Chang
 Deputy District Attorney, County of San Mateo

| Date Filed | # | Docket Text |
|------------|--------------------------|--|
| 09/13/2007 | <u>1</u> | PETITION for WRIT of HABEAS CORPUS by Lilian Guterres. (Engbretson, K.) (Entered: 09/14/2007) |
| 09/13/2007 | <u>2</u> | REQUEST for Appointment of Counsel by Lilian Guterres. (Engbretson, K.) (Entered: 09/14/2007) |
| 09/14/2007 | <u>3</u> | (Court only) CASE Reassigned to Judge Garland E. Burrell, Jr. Judge D Lowell Jensen no longer assigned to the case. Case number to read 2:07-cv-01899-GEB-EFB. (Engbretson, K.) (Entered: 09/14/2007) |
| 09/14/2007 | <u>4</u> | PRISONER NEW CASE DOCUMENTS ISSUED; (Attachments: # <u>1</u> Consent Forms) (Engbretson, K.) (Entered: 09/14/2007) |
| 09/14/2007 | <u>5</u> | SERVICE BY MAIL: <u>4</u> Prisoner New Case Documents served on Lilian Guterres. (Engbretson, K.) (Entered: 09/14/2007) |
| 09/21/2007 | <u>5</u> | ORDER signed by Judge Edmund F. Brennan on 9/20/07 ORDERING the CASE TRANSFERRED to the Northern District of California. Original file, certified copy of transfer order, and docket sheet sent. CASE CLOSED.(Donati, J) (Entered: 09/21/2007) |
| 09/21/2007 | <u>6</u> | SERVICE BY MAIL: <u>5</u> Order Transferring Case served on Lilian Guterres (Donati, J) (Entered: 09/21/2007) |
| 09/21/2007 | <u>6</u> | TRANSMITTAL of DOCUMENTS re <u>5</u> Order transferring Case on *9/21/2007* to * United States District Court* *Northern District of California* *450 Golden Gate Ave. 16th Floor* *San Francisco, CA 94102*.. *Electronic Documents: 1 to 5. (Donati, J) (Entered: 09/21/2007) |

I hereby certify that the annexed
 instrument is a true and correct copy of
 the original on file in my office.

ATTEST: **VICTORIA C. MINOR**

Clerk, U. S. District Court
 Eastern District of California

By

Deputy Clerk

Dated

IN PRO PER

Name LILIAN GUTERRES
 Address X06750 (VSPW) AI-9-1L
P.O. Box 92
CHONCHILLA, CALIFORNIA 93610

CDC or ID Number X06750 / SMCJ 294289

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
 (Court)

FILED

FILED

SEP 13 2007

CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

LILIAN GUTERRES
 Petitioner
 vs.
**SUPERIOR COURT OF CALIFORNIA,
 DISTRICT ATTORNEY AND DEPUTY**
 Respondent **DISTRICT ATTORNEY CHANG**
OF THE COUNTY OF SAN MATEO

PETITION FOR WRIT OF HABEAS CORPUS

No. 207CV1899 DLJ EFB
 (To be supplied by the Clerk of the Court)

C 07 4966

**SBA
 (PR)**

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by-mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court (as amended effective January 1, 2005). Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☒ A conviction ☐ Parole
☒ A sentence ☐ Credits
☐ Jail or prison conditions ☐ Prison discipline

☒ Other (specify): ABUSE OF JUDICIAL AUTHORITY, UNWARRANTED REMAND INTO CUSTODY
AND EXONERATION OF EXCESSIVE BAIL; EXCESSIVE SENTENCE TERM WITH
PREJUDICIAL MALICE; MULTIPLE INFRACTIONS OF U.S. CONSTITUTIONAL RIGHTS

1. Your name: LILIAN GUTERRES
 2. Where are you incarcerated? VALLEY STATE PRISON FOR WOMEN
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

PETTY THEFT WITH PRIOR

FALSE INFORMATION TO A PEACE/POLICE OFFICER

- b. Penal or other code sections: P.C. 666; P.C. 148.9
 c. Name and location of sentencing or committing court: SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
 d. Case number: SC0624724 A
 e. Date convicted or committed: JULY 21, 2007
 f. Date sentenced: AUGUST 2, 2007
 g. Length of sentence: THREE (3) YEARS, NINETY (90) DAYS; CONSECUTIVE
 h. When do you expect to be released? UNKNOWN
 i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:
ALEX BERNSTEIN, ESQ.
88 NORTH HILL DRIVE, BRISBANE, CALIFORNIA 94005

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

1. PEOPLE FAILED TO PROVE "UNLAWFUL TAKING" AS WELL AS ASPORTATION OF PROPERTY OF SOME INTRINSIC VALUE WITH INTENT TO DEPRIVE OWNER.
2. TRIAL COURT IMPOSED ILLEGAL TERM OF SENTENCE AND ENHANCEMENTS² AND, FAILED TO ADEQUATELY INSTRUCT JURY OR CAUTION PROSECUTOR ON ASPECTS OF LAW (P.C. 484, 488 + 666)
3. INADEQUATE ASSISTANCE OF COUNSEL³ (EXHIBIT "A")

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

D.A. FAILED TO PROVE "UNLAWFUL TAKING" BY FAILING TO SHOW JURY ENTIRE SURVEILLANCE/SECURITY VIDEO. D.A. ALSO FAILED TO PROVE ITEMS WERE "STOLEN" AS SECURITY SENSORS WERE NEVER TRIGGERED OR ACTIVATED ^{WHEN} ~~WAS~~ PASSING THROUGH SENSOR POSTS ^{UPON} EXITING AT "RETURN" ENTRANCE.

TRIAL JUDGE FAILED TO APPROPRIATELY INSTRUCT/PREPARE JURY AS TO FULL SCOPE OF LAW; ^{MITIGATING} DIFFERENCES BETWEEN AN "ADMITTANCE" AND "CONFESSION" OF GUILT AND, TO VALIDITY OF STATEMENTS MADE UNDER STRAIN AND DURESS.

TRIAL JUDGE ELIS THREATENED DEFENDANT WITH CONTEMPT, ^{THEREBY} PREVENTING/HINDERING OUTCOME OF TRUTH (FEAR OF DEPORTATION) - UNCONSTITUTIONAL (OBSTRUCTION OF JUSTICE) INEFFECTIVE ASSISTANCE OF COUNSEL³ (EXHIBIT "A")

- COUNSEL SUBSTITUTED LAST MINUTE WITHOUT PRIOR NOTICE OR ACKNOWLEDGEMENT OF DEFENDANT THEREFORE, LACK OF AMPLE TIME FOR ADEQUATE PREPARATION OF TRIAL
- COUNSEL USED CONFUSING, MISLEADING AND EXCESSIVE LEGAL JARGON

(e.g. BIFURCATION⁴) WITHOUT FURTHER DETAILED EXPLANATION INTENDING TO CONFUSE + IMPAIR JUDGMENT DEFENDANT

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

PEOPLE v. JAMES (1957-2ND DIST.) 155 CAL. APP. 2d 604, 318 P2d 175, 1957 CAL APP. LEXIS:

¹³²⁹ 8 USCS §1227 (a) (2) (A) (i) (II), *RUSZ v. ASHCROFT* (2004) CA 9 376 F3d 1182 2004

US APP. LEXIS 15837. ³ *PEOPLE v. MARSDEN* (1970) (SUPRA) 2c 3d 118; *PEOPLE v. HILL*

(1983) 148 CA3d 744; *PEOPLE v. CRUZ* (1978) 83 CA 3d 308; 5TH, 6TH + 14TH AMENDMENTS TO U.S. CONSTITUTION; ARTICLE I, SECTIONS 7 + 13 OF THE CALIF. CONSTITUTION;

7. Ground ~~4~~ Ground 6 (if applicable):

4. CRUCIAL EVIDENCE / DISCOVERY WITHHELD BY BOTH COUNSELS.

5. TRIAL COURT IMPOSED ILLEGAL ENHANCEMENTS BASED ON ^{PAST} "NOLO CONTENDERE" PLEAS AND PREPONDERANCE-BASED FACTS. ⁴

6. DENIAL OF MARSDEN MOTION³ AND FAILURE TO FULLY INQUIRE ALL SAID CLAIMS, WRITTEN OR OTHERWISE, MANDATES DISMISSAL AND/OR REVERSIBLE ERROR.

a. Supporting facts:

- COUNSEL FAILED TO ADEQUATELY PREPARE DEFENDANT, AS AGREED, FOR TESTIMONY ON WITNESS STAND, THEREBY CAUSING DEFENDANT TO SELF-INCRIMINATE + IMPERACHMENT
 - COUNSEL REFUSED DEFENDANT'S REPEATED REQUESTS TO INTRODUCE NEW + COMPELLING EVIDENCE WHICH WOULD EXONERATE AND RAISE "REASONABLE DOUBTS" AS TO CREDIBILITY / TESTIMONY OF PEACE OFFICERS; FAILING TO IMPERACH AND INDICT ON VIOLATIONS OF "DUE PROCESS" OR "EQUAL PROTECTION" CONSTITUTIONAL RIGHTS
 - COUNSEL FAILED TO INVESTIGATE ADEQUATELY, SUBPOENA WITNESSES / EVIDENTIARY NECESSARY FOR EFFECTIVE DEFENSE STRATEGY / TACTICS.
 - COUNSEL FAILED AND REFUSED TO RETURN SEVERAL DEFENDANT TELEPHONE CALLS WEEK PRIOR TO TRIAL (JULY 12TH ON) (ALL CALLS WERE FORWARDED TO ANSWERING SERVICE EVEN WHEN DEFENDANT GOT LOST ENROUTE TO ARRANGED MEETING ON 7/12); FAILED TO MAKE ^{OR SET} ANY ALTERNATIVE MEETINGS⁴, OF WHICH ^{ALL} WERE ^{CONVEYED} TO ED AMERSON, ESQ. ON 7/15 WHEN DEFENDANT CONTACTED PRIVATE DEFENDERS' PROGRAM OF SAN MATEO TO SEEK ADVICE AND COMPLAIN OF PROBLEMS WITH ^{APPOINTED} ATTORNEY.
 - COUNSEL FAILED TO INVESTIGATE AND ADVISE INAPPROPRIATELY ALL ASPECTS, ADVERSE OR OTHERWISE, OF CASE ESPECIALLY AS TO DEFENDANT'S IMMIGRANT STATUS. TRIAL JUDGE BIASLY AND UNREASONABLY EXONERATED BAIL, REMANDED DEFENDANT INTO CUSTODY AND, UNCONSTITUTIONALLY RAISED BAIL EXCESSIVELY, PREVENTING DEFENDANT FROM SEEKING RELIEF OF JUDGEMENT OR TIMELY FILING OF STAY OF EXECUTION.
- b. Supporting cases, rules, or other authority: TRIAL JUDGE DENIED MARSDEN MOTION WITH EXTREME BIAS; FAIL TO LOOK AT VIOLATION OF "DUE PROCESS + EQUAL PROTECTION" RIGHTS. ⁴ CUNNINGHAM V. CALIF. MOTION UNIT DEFENDANT INSISTED FILING IT ON RETO
- CASE No. 05-6551 (2007) LEXIS 1324; U.S. v. BENTLEY 432 F. 3d 600, 605 (5TH CIRCUIT - 2005); IN RE: ELWOOD, 408 F3d 211-13 (5TH CIRCUIT - 2005) (per curiam); APPENDI V. NEW JERSEY, 530 U.S. 466, 120 S.Ct. 2348, 147 L. Ed. 2d 4352348

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

SUPERIOR COURT OF CALIFORNIA - SAN MATEO COUNTY (EXHIBIT "B(i)" & "B(ii)")

b. Result UNKNOWN

c. Date of decision: _____

d. Case number or citation of opinion, if known: SC0624724A

e. Issues raised: (1) DENIAL OF MARSDEN MOTION WITHOUT REASONABLE CAUSE NOR
(2) INEFFECTIVE ASSISTANCE OF COUNSEL FULL INQUIRY

(3) TRIAL JUDGE BIASED AND UNDUPLY HARSH ASSESSMENT AND JUDGEMENT

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result _____

b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

DEFENDANT IS LAYMAN, UNTRAINED IN LAW AND ATTORNEY BERNSTEIN WOULD NOT

OR WAS RELUCTANT TO FILE APPEAL WHEN REQUESTED REPEATEDLY, ADVISING

DEFENDANT AT BOTH 7/21 & 8/2 HEARING DATES, TO CALL SAN MATEO PRIVATE

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 (125 Cal.Rptr. 286).) Explain what administrative review you sought or explain why you did not seek such review:

DEFENDERS' PROGRAM.

b. Did you seek the highest level of administrative review available? ☐ Yes. ☒ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: SUPERIOR COURT OF CALIFORNIA - SAN MATEO COUNTY

(2) Nature of proceeding (for example, "habeas corpus petition"): PETITION FOR "STAY OF EXECUTION"

(3) Issues raised: (a) PENDING APPELLATE REVIEW AND OVER POPULATION OF JAILS AND PRISONS

(b) _____

(4) Result (Attach order or explain why unavailable): ASSUMPTION OF DENIAL AS DEFENDANT WAS TRANSFERRED TO VSPW 9/15 AND ORDER WAS NOT RECEIVED IN A TIMELY MANNER.

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

GROSS INJUSTICE; CONFLICTS OF INTERESTS AND EXTREME PREJUDICES WITH COUNTY'S LOCAL JURISDICTIONS. VIOLATIONS OF BOTH U.S. & CALIFORNIA CONSTITUTIONAL RIGHTS AS WELL AS HUMAN RIGHTS.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: SEPTEMBER 07, 2007


(SIGNATURE OF PETITIONER)

EXHIBIT A

Lilian Guterres (SMCJ#294289)
WCC - 1590 Maple Street - C
Redwood City, California 94063

Alex Bernstein, esq.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

PEOPLE OF THE STATE OF CALIFORNIA

plaintiff,

-vs-

LILIAN GUTERRES

defendant,

CASE NO.: SC062472A

NOTICE OF MOTION AND MOTION
FOR SUBSTITUTION OF COUNSEL

(MARS DEN MOTION)

TO: THE HONORABLE COURT IN THE ABOVE-ENTITLED CAUSE OF ACTION
AND DISTRICT ATTORNEY OF THE COUNTY OF SAN MATEO.

Please be advised that on the 2nd day of August, 2007, at
the hour of 0830 in Department 12 of the above-entitled court,
or as soon thereafter as this Motion can be heard, defendant or
counsel will move the court for an Order to Dismiss and/or Relieve
Counsel due to Inadequate Representation of Counsel.

This Motion is based upon this Notice of Motion and Motion,
the attached Declaration(s) all Memorandum of Points and
Authorities submitted, testimony and other evidence produced at
evidentiary hearing(s), all files and records of the case, and
any other evidence presented whether oral or documentary.

Date: August 2, 2007


Lilian Guterres, Defendant

DECLARATION

I, LILIAN GUTERRES, state:

1. That I am defendant/declarant in the within cause of action and a lay person untrained in law;
2. That I am represented by Counsel who has failed and/or refused to provide adequate representation in the within cause of action;
3. That due to conflicts which exist between declarant and counsel, declarant can and will not receive adequate representation by counsel of record in the within cause of action;
4. That at the hearing on this Motion, declarant will provide the necessary evidence to support the claim herein alleged;
5. That due to the lack of adequate representation of counsel declarant has suffered prejudice such as to justify dismissal of charges currently pending, or in the alternative to enjoy the substitution of counsel;
6. That in addition to any evidence presented in support of this Motion at the evidentiary hearing on the within matters, declarant does hereby incorporate by reference each and every statement following:
 - (a) Substitution of counsel was made without proper and adequate notification and/or acknowledgment of declarant and was only made aware two weeks prior to trial by jury.

- 1
- 2 (b) Counsel failed to meet with declarant at prearranged
- 3 date, time and place, and failed or refused to return
- 4 any calls made by declarant the week preceding trial
- 5 of which such complaints were noted with Ed Pomeroy,
- 6 esq. Staff Attorney at the Private Defender Program on
- 7 Friday, June 15, 2007.
- 8 (c) Counsel has failed to allocate adequate time to confer
- 9 with declarant concerning details, strategies and/or
- 10 tactics in preparation of the defense and to avoid
- 11 unnecessary immigration consequences.
- 12 (d) Counsel has failed and/or refused to communicate
- 13 appropriately and effectively with declarant during and
- 14 at the time of trial;
- 15 (e) Counsel did fail and or refused to subpoena witness(es)
- 16 favorable to the defense and deprived declarant of
- 17 testimony critical to the defense;
- 18 (f) Counsel has failed and/or refused to perform and/or to
- 19 have investigation(s) critical and necessary to the
- 20 defense;
- 21 (g) Counsel has failed or was absent to present and prepare
- 22 an affirmative defense at defendant's preliminary hearing;
- 23 (h) Counsel has failed and/or refused to secure and present
- 24 expert witness(es) critical to the defense;
- 25 (i) Counsel has failed and/or refused to secure and present
- 26 expert witness(es) critical to the defense;
- 27 (j) Counsel has failed and/or refused to impeach prosecution
- 28 witness(es)
- 29
- 30

- 1
- 2 (k) Counsel has failed and/or refused to investigate
- 3 declarant's immigration status, research the immigration
- 4 law and inform declarant very specifically about potential
- 5 critical consequences.
- 6 (l) Counsel has failed to advise declarant or protect the
- 7 right not to reveal the declarant's immigration status
- 8 to a judge.
- 9 (m) Counsel has failed and/or refused to declare prejudice
- 10 and/or conflict against declarant and due to said failure
- 11 has taken on the role of a surrogate prosecutor against
- 12 declarant's interests.
- 13

14 VERIFICATION

15 That I have read the above statements and swear under

16 penalty of perjury that these statements are true and correct

17 based upon my information and belief.

18

19 Executed this 2nd day of August, 2007 at the Superior Court

20 of California, 400 County Center, Redwood City, California 94063

21 pursuant to provisions of the Code of Civil Procedures, Section

22 446 and 2015.5.

23

24 

25

26 Lilian Guterres, Declarant

27

28

29

30

MEMORANDUM OF POINTS AND AUTHORITIES

I.

COMPLAINT OF MARSDEN ERROR MANDATES INQUIRY

Request for Substitution of Counsel based upon complaint that counsel is not providing adequate representation triggers court's duty to inquire further into basis for dissatisfaction PEOPLE -vs- MARSDEN (1970) 2c.3D 118, 465p.2D 44.

II.

JUDICIAL FAILURE TO INQUIRE UPON MARSDEN MOTION IS REVERSIBLE ERROR

Failure of judge to make inquiries as to claims of lack of adequate representation by defense counsel is prejudicial per se and constitutes reversible error. PEOPLE -vs- MARSDEN, (SUPRA) 2C.3d 118; PEOPLE -vs- HILL, (1983) 148 CA3d 744; PEOPLE -vs- CRUZ, (1978) 83 CA 3D 308.

III.

ALL JUDICIAL INQUIRY MUST BE ON THE RECORD

The failure to adequate inquiry as to complaint of Marsden Error results in a silent record making intelligent appellate review impossible and requiring reversal. PEOPLE -vs- MARSDEN (SUPRA) 2C.3d 118; PEOPLE -vs- HILL (SUPRA) 148 CA3d 744; PEOPLE -vs- CRUZ (SUPRA) 83 CA3d 308.

IV.

INADEQUATE REPRESENTATION BY DEFENSE COUNSEL REQUIRES DISMISSAL REVERSAL OF CONVICTION, AND/OR SUBSTITUTION OF COUNSEL

The 5th, 6th and 14th Amendments to the United States Constitution; Article 1, Section 7 and 15 of the California Constitution; PEOPLE -vs- MARSDEN (1970) 2c.3D 118.

CONCLUSION

Defendant has been deprived of Adequate Representation of Counsel and is therefore entitled to the Relief prayed for. The Motion should be granted.

| | | |
|--|--|------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Lilian Guterres (SMCJ# 294289/CDC# X06750) WCC - 1590 Maple Street Redwood City, California 94063 TELEPHONE NO.: FAX NO.: | | FOR COURT USE ONLY |
| ATTORNEY FOR (Name): In Pro Per | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: LILIAN GUTERRES Date of birth: 09/15/59 California Dept. of Corrections No. (if applicable): X06750 | | |
| NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1538.5(m); Cal. Rules of Court, rule 8.304) | | CASE NUMBER(S): SC062472A |

NOTICE

- If your appeal challenges the validity of the plea you must complete the *Request for Certificate of Probable Cause* on the other side of this form. (Pen. Code, § 1237.5.)
- You must file this form in the superior court within 60 days after entry of judgment.

1. Defendant (name): Lilian Guterres
appeals from the order or judgment entered on (specify date of order, judgment, or sentence): August 2, 2007
2. This appeal follows:
 - a. ☒ A jury or court trial. (Pen. Code, § 1237(a).)
 - b. ☐ A contested violation of probation. (Pen. Code, § 1237(b).)
 - c. ☐ A guilty (or no-contest) plea or an admitted probation violation (check all boxes that apply):
 - (1) ☐ This appeal is based on the sentence or other matters occurring after the plea. (Cal. Rules of Court, rule 8.304.)
 - (2) ☐ This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
 - (3) ☐ This appeal challenges the validity of the plea or admission. (You must complete the *Request for Certificate of Probable Cause* on the other side of this form.)
 - d. ☐ Other (specify):
3. ☒ I request that the court appoint an attorney on appeal. Defendant ☒ was ☐ was not represented by an appointed attorney in the superior court.
4. Defendant's address: ☒ same as in attorney box above.
☐ as follows:

Date: August 10, 2007

Lilian Guterres

(TYPE OR PRINT NAME)

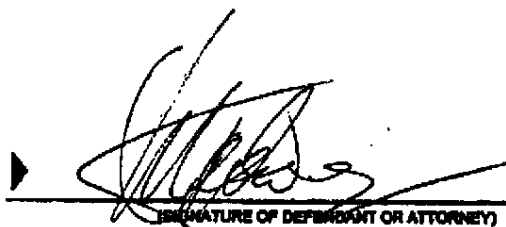

 (SIGNATURE OF DEFENDANT OR ATTORNEY)

EXHIBIT B(ii)

Lilian Guterres (SMCJ# 294289/CDC# X06750)
WCC - 1590 Maple Street - C
Redwood City, California 94063

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COURT OF SAN MATEO

PEOPLE OF THE STATE OF CALIFORNIA
-vs-
LILIAN GUTERRES
DEFENDANT,

Case No.: SC062472A
NOTICE OF APPEAL

TO: THE CLERK OF THE HONORABLE COURT IN THE ABOVE-ENTITLED
CAUSE OF ACTION OF THE COUNTY OF SAN MATEO.

Defendant hereby appeals from the judgment August 2, 2007.
(Cal. Rules of Ct. 182(a))

Dated: August 10, 2007

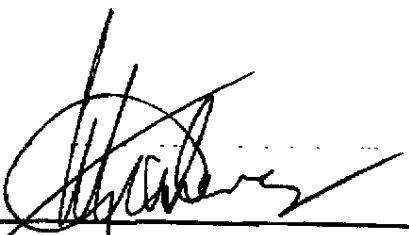

LILIAN GUTERRES, defendant

EXHIBIT "C"

Lilian Guterres (SMCJ# 294289/CDC# X06750)
WCC - 1590 Maple Street - C
Redwood City, California 94063

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COURT OF SAN MATEO

PEOPLE OF THE STATE OF CALIFORNIA

Case No.: SC062472A

PLAINTIFF,

PETITION FOR STAY
OF EXECUTION

-vs-

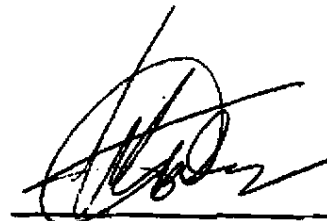
LILIAN GUTERRES

DEFENDANT,

TO: THE HONORABLE COURT IN THE ABOVE-ENTITLED CAUSE OF
ACTION OF THE COUNTY OF SAN MATEO.

Defendant hereby petitions the Court for an Order to Stay
Execution of Judgement of August 2, 2007 pending appellate
review.

Dated: August 10, 2007




LILIAN GUTERRES, defendant

LILIAN GUTERRES (CDC X06750/SMCJ 294289)
A1-9-11/VSPW
P.O. BOX 92
CHOWCHILLA, CALIFORNIA 93610
IN PRO PER

FILED

SEP 13 2007

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE
LILIAN GUTERRES
ON HABEAS CORPUS

NO.: 07-CV 1899 DLJ EFB
REQUEST FOR APPOINTMENT OF
COUNSEL AND DECLARATION OF INDIGENCY

I, LILIAN GUTERRES, DECLARE I AM A PETITIONER TO THE ABOVE-REFERENCED MATTER, THAT I AM INCARCERATED AT THE VALLEY STATE PRISON FOR WOMEN, AND THAT I AM INDIGENT AND UNABLE TO AFFORD COUNSEL. MY TOTAL ASSETS ARE \$0.00 AND MY INCOME IS \$0.00 PER MONTH.

I, HEREBY REQUEST THAT COUNSEL BE APPOINTED IN SAID MATTER SO THAT MY INTEREST MAY BE PROTECTED BY THE PROFESSIONAL ASSISTANCE REQUIRED. IN ADDITION, WHEN A COURT ISSUES AN ORDER TO SHOW CAUSE, COUNSEL MUST BE APPOINTED FOR AN INDIGENT PETITIONER WHO REQUESTS COUNSEL. (CALIFORNIA RULES OF COURT - RULE 4.551(c)(2)).

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED THIS 7th DAY OF AUGUST, 2007



LILIAN GUTERRES, PETITIONER

DATED: August 7, 2007.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Victoria C. Minor
Clerk of Court

Office of the Clerk
501 "I" Street
Sacramento, CA 95814

Divisional Office
2500 Tulare Street
Fresno, CA 93721

September 14, 2007

Case Number: 2:07-CV-01899-GEB-EFB

Case Title: LILIAN GUTERRES, vs. SUPERIOR COURT OF CALIFORNIA,

Dear Litigant,

You are hereby notified that the above case number has been assigned to your action. You are to include the complete case number on all documents sent to the court for filing in this case. Failure to do so results in delayed processing of your documents.

All matters in this action shall be sent to the following address until further notice:

Office of the Clerk
United States District Court
Eastern District of California
501 "I" Street , Suite 4-200
Sacramento, CA 95814

For timely processing of your pleadings or correspondence, please comply with our Local Rules of Court, in particular:

Local Rule 5-133 The court requires an original plus one copy of each document sent for filing. If you desire to receive a conformed copy for your records, you must send an original and two copies of your document and a pre-addressed postage-paid envelope for us to return your copy to you.

Local Rule 5-135 Once the defendant(s) have served a responsive pleading, you are under an ongoing duty to serve them with copies of all documents you submit to the court. A proof of service shall be attached to the original of any document lodged or filed with the court, showing the date, manner and place of service. A sample proof of service is attached.

Local Rule 7-130 Documents submitted to the court must be legible, on 8-½ " x 11" paper, with writing on one (1) side of the page only. Each separate document must be stapled at the top left corner and pre-punched with two (2) holes centered 2-¾" apart, ½" from the top edge of the page. Each page should be numbered consecutively at the bottom.

Local Rule 7-132 Every document submitted to the court must include your name, address and prisoner identification number in the upper left hand corner of the first page. The caption on the first page must include the title of this court, the title of the action, the case number assigned to this action (including all initials and letters that follow the number), and the title of your document. If you are pursuing more than one action in this court, you must submit a separate original document and the appropriate number of copies for each action in which you want the document filed.

Local Rule 6-142 A request for extension of time must state the reason an extension is needed. A request for extension of time should be filed before the deadline in question.

Local Rules 30-250, 33-250, 34-250 and 36-250 Discovery requests or responses should not be submitted to the court unless they are relevant and necessary to support or oppose a motion at issue before the court.

Local Rule 83-182 Each party appearing in propria persona is under a continuing duty to notify the Clerk and all other parties of any change of address.

Other Provisions:

Request for Case Status The court will notify you as soon as any action is taken in your case. Due to the large number of civil actions pending before the court, THE CLERK IS UNABLE TO RESPOND IN WRITING TO INDIVIDUAL INQUIRES REGARDING THE STATUS OF YOUR CASE. As long as you keep the court apprised of your current address, you will receive all court decisions which might affect the status of your case.

Copy Work The Clerk's Office does not provide copies of documents to parties. Copies of documents may be obtained from Attorney's Diversified Service (ADS) by writing to them at: 1424 21st Street, Sacramento, CA 95814, or by phoning 916-441-4396 or 916-441-4466. The court will provide copies of docket sheets at \$0.50 per page. **Note: In Forma Pauperis** status does not include the cost of copies.

Victoria C. Minor
Clerk of Court
United States District Court

by: /s/ K. Enghretson
Deputy Clerk

The following is a sample Proof of Service. Pursuant to Rule 5 of the F.R.Cv.P. and Local Rule 5-135, each document filed after the court orders service in your case shall be served on opposing counsel and a proof of service attached to your document filed with the court.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

(Case Title) _____
Plaintiff or Petitioner

V.

Case Number: 2:99-CV-99999 ABC DFG
(example case no.)

Defendant or Respondent

SAMPLE PROOF OF SERVICE

/

I hereby certify that on (Date) _____, I served a copy
of the attached (Title of Document Served and Filed) _____
by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the United States Mail at (Location of Mailing) _____.

(List Name and Address of Each Defendant or Attorney Served)

I declare under penalty of perjury that the foregoing is true and correct.

(Name of Person Completing Service)

**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE
TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS**

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 73-305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case despositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent to pursuant to 28 U.S.C. § 636(c) the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at www.caed.uscourts.gov for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk
501 I Street, Room 4-200
Sacramento, CA 95814

Office of the Clerk
2500 Tulare Street , Suite 1501
Fresno, CA 93721

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LILIAN GUTERRES, _____

Plaintiff(s)/Petitioner(s),

vs.

CASE NO. 2:07-CV-01899-GEB-EFB

SUPERIOR COURT OF CALIFORNIA, _____

Defendant(s)/Respondents(s).

IMPORTANT

**IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF
A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE
SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.**



**CONSENT TO JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C. Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: _____

Signature: _____

Print Name: _____

() Plaintiff/Petitioner () Defendant/Respondent

() Counsel for * _____



**DECLINE OF JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: _____

Signature: _____

Print Name: _____

() Plaintiff/Petitioner () Defendant/Respondent

() Counsel for * _____

**If representing more than one party, counsel must indicate name of each party responding.*